

RemarksAmendments

Of the pending claims 1-17, claims 1, 2, 3, 14-17 have been amended.

Applicants request that claims 1-3 be amended to correct the spelling of "substituents".

Claims 1, 14-16 were amended to alter the format of the chemical moiety described when  $E^1$  and  $E^3$  are formed together, *i.e.*, instead of using the " $N(CH_3)_3$ " format the " $=N-CH=CH-CH=$ " format was chosen per the Examiner's suggestion.

Claim 17 was amended to remove a compound that was inadvertently repeated.

No new matter has been added.

Claiming Priority

Applicants note that any application is entitled to the benefit of the filing date of an earlier application as to common subject matter. *See* Weil v. Fritz, 572 F.2d 856, 865 n.16, 196 USPQ 600, 608 n.16 (CCPA 1978); Wagoner v. Barger, 463 F.2d 1377, 1380, 175 USPQ 85, 86 (CCPA 1972); *In re* Van Langehoven, 458 F.2d 132, 136, 173 USPQ 426, 429 (CCPA 1972); 1082 *In re* Lukach, 442 F.2d 967, 968, 169 USPQ 795, 797 (CCPA 1971); *In re* Shaw, 202 USPQ 285, 293 (Comm. Pat. 1978). In this respect, Applicants claim of priority to its parent application's provisional application USSN 60/264,570 is proper.

Claim Objection

The Examiner objected to Claim 17 because it repeated the same compound among those claimed. Claim 17 was amended to remove a compound that was inadvertently repeated. Applicants request that the objection therefore be withdrawn.

§112 Rejection

Claims 1-16 were rejected under §112 over the format of the chemical moiety described when  $E^1$  and  $E^3$  are formed together. Originally, the moiety was described as " $N(CH_3)_3$ " and now has been amended to " $=N-CH=CH-CH=$ ", a format suggested by the Examiner and selected by the Applicants in order to advance prosecution. Applicants therefore request that the §112 rejection be withdrawn.

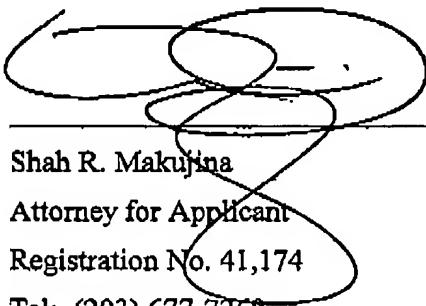
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§102(e) and §§102(e)/103 Rejections

Claims 1, 2, 4, 5, 7 and 10-17 were rejected under §102(e) and claim 6 was rejected under §§102(e)/103 based upon "references" that were members of the instant divisional application's patent family, *i.e.*, U.S. 6,888,004, U.S. Pub. No. 2004/0254382 and U.S. Pub. No. 2004/0225001. Applicants respectfully traverse said rejections. The Examiner's rejection seems to be based on two points. First, that the §102(e) "references" describe certain compounds that anticipate the instant claims. Second, that Applicants are not entitled to rely upon their priority application in order to defeat the §102(e) rejection because the "reference compounds" (*e.g.*, Examples 211, 237 and 280) were not disclosed in the priority application (USSN 60/264,570). Applicants contend that the Examiner's rejection is improper precisely for the same reason, *i.e.*, since the "reference compounds" don't appear in the priority application, the Examiner cannot rely upon that date for §102(e) purposes. MPEP §2136.03 Part IV specifically requires that the "filing date of a U.S. parent application can only be used as the 35 U.S.C. 102(e) date if it supports the claims of the issued child." Thus, if Examples 211, 237 and 280 were not present in the parent, then the Examiner cannot rely upon the parent's date for §102(e) purposes. Applicants therefore respectfully request that the §102(e) and §§102(e)/103 rejections be withdrawn.

In light of the amendments and remarks herein, Applicants respectfully request the Examiner to enter said amendments and respectfully submit that the application is in condition for examination. The Commissioner is authorized to withdraw any fees from Deposit Account 19-3880.

Respectfully submitted,



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